81 -2281

No. 81-_____

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Supreme Court of the United States

OCTOBER TERM, 1981

RIVOLI TRUCKING CORPORATION and
M. MAURICE GRAHAM,

Plaintiffs-Appellants,

—against—

NEW YORK SHIPPING ASSOCIATION, INC., et. al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether plaintiffs' complaints set forth facts sufficient to constitute a cause of action.

2. Whether the prohibition against "unfair methods of competition" and the remedies provided for enforcement of that prohibition extends to the condition of one who is compelled by force, coercion or imprisonment and against his will to labor for another.

3. Whether it is reasonable to believe that the defendants' combination monopolizes or restrains trade in interstate or foreign commerce to such an extent that disregard of the Shipping Act, 46 U.S.C. 801 et seq., The Tariff Act of 1930; 46 Stat 590; 19 U.S.C. 1201 and the Federal Rules of Civil Procedure are innocent pastimes.

4. Whether the defendants may engage in methods effecting commerce that are intended to prohibit and destroy plaintiffs' occupations.

5. Whether it is lawful, in the course of commerce to be a party to or assist in any purposeful transaction which compels United States Customs Cartage Cartment to become lawbreakers.

6. Whether the ends of justice require that all parties to this dispute should be brought before the Court when a combination, conspiracy or contract is in existence which facially is intended to operate in disregard of the Shipping Act of 1916; 46 U.S.C. 801 et seq., The Tariff Act of 1930; 46 Stat 580; 19 U.S.C. 1202; CR-112.13 through 112.30(a) 1-10 and the Federal Rules of Civil Procedure.

7. Whether the making of a motion for summary judgment, before any answer is served, constitutes a responsive pleading to plaintiffs' complaints.

Table of Contents

	Page
Questions Presented	i
Table of Authorities	ix
Jurisdictional Statement	1
Public Policy an Unsolved Dilemma	3
Historical Background	6
I - NO DENIAL OF THE TRUTH OF PLAINTIFFS' COMPLAINT CAN BE FOUND IN THE RECORD	7
II - COMPENSATION FOR WRONGS OF A REPEATED AND CONTINUING CHARACTER	8
III - A MARITIME AGREEMENT LESSENING OR RELIEVING AN OCEAN CARRIER FROM LIABILITY IS NULL AND VOID - - 46 U.S.C. 1303 (8)	11
Conclusion	13
APPENDIX A	
Notice of Appeal	A1
The December 31, 1981 Order made in the M-37 Proceeding	A3

Page

Plaintiffs' Proposed Verified Complaint No. 81 Civ 0554 (RJW) .. A6

The August 31, 1981 Determination Made in 81 Civ 0554 (RJW) A25

Plaintiffs' Proposed Verified Amended Complaint in Civ. 0554 (RJW) A41

The April 19, 1982 Order of the United States Court of Appeals for the Second Circuit made in No. 81-7788 ..... A48

The October 26, 1981 Order of the United States District Court made in No. 81 Civ. 0554 (RJW) A54

The October 26, 1981 Order of the United States District Court made in 81 Civ. 0554 (RJW) A56

The December 20, 1956 Confirmation of the Status Quo made in Civ. 115-303, Bicks, J. A57

The Defendants' Agreement dated March 23, 1959 made amending Federal Maritime Board Agreement 8005 ..... A59

Page

The September 14, 1981 Order entered by the Clerk of the United States District Court in 81 Civ. 0554 (RJW) A65

APPENDIX B

A list of parties whose judgment is sought to be reversed B1

Notice of Appearance B2

TABLE OF AUTHORITIES

Page

Statutes

5 U.S.C. 702 Government Organization.. 4

19 U.S.C. Customs Duties 1202..... 3,5,12

19 CFR Customs Regulations
112.22-112.30 (a) 1-10..... 5

46 U.S.C. Shipping 1303 (8)..... 11

49 U.S.C. Transportation 11109..... 6

49 U.S.C. Transportation 10706 c,d (C). 9

Cases

Air Transport Association v.
Professional Air Controllers
516 F.S. 2 1108..... 12

Anti- Fascist Refugee Committee v.
McGrath 341 US 123..... 10

Brown v. Allen 344 U.S. 443..... 11

Citizens Savings & Loan Association v.
Topeka 20 Wall. 655..... 11

Douds ex rel N.L.R.B. v. International
Longshoremen's Association..... 2 & A57

Re Debs 158 US 564..... 13

Duplex Printing Press v. Deering
254 US 443..... 8

Gibbons v. Ogden 9 Wheat 1..... 11

Page

Grand Jury Investigation of the Shipping Industry 186 F. Supp 298..... 7

Noerr Motor Freight Inc. v. Eastern R.R. Presidents' Conference 14 FRD 189..... 7

Pennsylvania Motor Truck Association v. Philadelphia Terminal Association 183 FS 2 910..... 7

Staten Island Loaders Inc., v. Waterfront Commission of New York Harbor 117 F.S. 2 308; 347 US 439..... 6 & 9

Truax v. Raich 239 US 33..... 9

U.S. v. Local 807 International Brotherhood of Teamsters, Helpers, etc. 315 US 521..... 7

Rules

28 U.S.C. 2072

JURISDICTIONAL STATEMENT *

Plaintiffs appeal, as of right, (42 U.S.C. 2000e-6 (b), from the final order dated April 19, 1982 of the United States Court of Appeals for the Second Circuit where was drawn in question the validity of Federal Maritime Board/Commission Agreement 8005 and 8005-1.

The April 19, 1982 decision aforesaid was in favor of the validity of Federal Maritime Board Agreement 8005 and 8005-1.

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* A list of parties to this appeal can be found in Appendix B.

It is contended that it was erroneuos for the United States Court of Appeals for the Second Circuit to affirm the orders, memorandums and opinions of the United States District Courts for the Eastern and Southern Districts of New York.

The controlling precedent that was overlooked by the several courts below was the plaintiffs' right to work for a fair day's pay for a fair day's work.

District Court Bicks, J., Southern District of New York confirmed on January 22, 1957 in case No. 115-303:

> "Rivoli could load customers as of this date with his equipment and men at the piers in North River, Brooklyn, Staten Island and at the other piers in the Port of New York."

"WHEREAS", the defendants unilaterally agreed to prohibit, hinder, deny and boycott plaintiffs' attempts to earn a fair day's pay for a fair day's work.

> "1 (a) The tariff may contain rules regulations and practices prohibiting the loading of trucks at the piers or other waterfront terminals in said port by anyone other than the operators of said piers or waterfront terminals"---(F.M.B. Agreement 8005-1 March 23, 1959.) .

So that the April 19, 1982 order of the United States Court of Appeals for the Second Circuit raises the aforesaid "Standing Qestions".

PUBLIC POLICY AN
UNSOLVED DILEMMA

There is a fundamental constitution conflict in the case at the bar, which still is unsettled. The Tariff Act of 1930; 46 Stat 590 CR 112.13 through 112.30 (a) 1-10 has been repeatedly and continuously disregarded by the defendants notwithstanding the plaintiffs' objections.

The power of taxation of the Federal Government extends to those matters explicitly entrusted to it by the Constitution and this power was exercised by Congress in the Tariff Act of 1930; 46 Stat 590; 19 U.S.C. 1202 which Congress enacted to protect the health, safety and morals of people or to promote

the general welfare in such specific fields and jurisdictions as interstate and foreign commerce.

In the absence of denials, which would have been appropriate in an answer, if one had been filed, the averments of the complaint should be taken as true for the present purposes. The resolution that there was lack of subject matter jurisdiction, in the manner urged by the defendants, has put a weapon in the hands of the defendants that allows tribute to be exacted from United States Customs Cartmen, notwithstanding that it is written at 80 Stat392; 5 U.S.C 702 that, "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof."

Since the terms of plaintiffs' licenses required them to be renewed yearly upon payment of the required license fees, the plaintiffs would still be in possession, operation and control of the property they owned, if the defendants had not been granted authority by the Federal Maritime Board to charge the plaintiffs fees amounting to 130% of their revenue, which the plaintiffs' customers were not under the obligation to pay.

The appellants continue to draw into question the legality of the schedule of rates approved by the Federal Maritime Board, wherein defendants were given the authority to collect rates, imposts, excises or exactions for "Extra labor" which plaintiffs did not need, want or request, at a time when the only liability of the importer due to the United States, were the charges listed at 19 U.S.C. 1202. (USTS).

The United States District Courts, Eastern and Southern Districts of New York repetitiously summarily dismissed plaintiffs' complaints before defendants served and filed an answer to plaintiffs' complaints.

The United States Court of Appeals for the Second Circuit, affirmed the orders of the United States District Courts, in its order of April 19th, 1982. It is from that order that this appeal is taken seeking to vacate the "joinder in demurrer" and for recogntition of plaintiffs' right to work, to hold a job, perform an act of labor, unmolested, in order to sustain themselves in the occupation of United States Customs cartage cartman. 19CFR 112.30 1-10. The right which plaintiffs seek to redress are responsibilities or accountability under a law of Congress, the equal protection clauses of

the Fourteenth Amendment as well as Article 1 Section 8 and 10 and Article II section 3 of the Constitution of the United States.

HISTORICAL BACKGROUND

Since 1954, the gravaman of the plaintifs' complaint has been "the problem that some carriers and owner-operators have had with having to pay large fees to so called lumpers to load and unload their trucks. (Sec. 15 (a) (1) Subchaper 1 of Chapter III IV United States Code, which became 49 U.S.C, 11109). Hand,J. found that public loading existed on defendants' waterfront terminals since 1917. (Staten Island Loaders, Inc., v.Waterfront Commission of New York Harbor 117 F.S. 2 308). Customs cartage like the common carrier obligation carries with it responsibilities as well as rights. Imports "IN BOND" are those on which the duties have not been paid and the plaintiffs' undertakings given to the United States Customs are intended to protect the Treasury of the United States from loss of revenue and from "unpermitted" importations and customs carage cartmen guarantee to save the United harmless therefrom. Customs cartmen thereby become bound to the government to well and faithfully perform the function of United States Customs Cartage.

Plaintiffs feel an embarrasment, neither pleasant or congenial, under the circumstances, to sit down and compress into this jurisdictional statement, the story of the "system into which the United States wished to go was that of freeing commerce from every shackel"--Jefferson. There seems to be great uncertainty as to the law which should govern a contract for through carriage, partly by land and partly by water, from one state to another.(Pennsylvania Motor Truck Association et al. v Port of Philadelphia Terminal Association, et al 183 F.S. 2 910; Noerr Motor Freight Inc., et al., v Eastern R.R. Presidents' Conference 14FRD 189; United States v. Local 807 International Brotherhood of Teamster 315 U.S. 521. In the Matter of the Grand Jury Investigation of the Shipping Industry Misc No. 5-60 186 F. Supp 298.)

I

NO DENIAL OF THE TRUTH OF PLAINTIFFS' COMPLAINT CAN BE FOUND IN THE RECORD.

The April 19th, 1982 order of the United Court of Appeals for the Second Circuit poses a question of procedural due process. The entities that signed the March 23, 1955 agreement and tariffs in amendment thereunder, were bound to adhere to them and unconditionally embraced deliberate and willful infrac-

tions and violations of United States Customs regulations, yesterday, today and tomorrow, as an instrument of policy making certain acts impinging on the United States Customs wrongfully burdensome. Those infractions are wrongful whether the plaintiffs do them or the defendants do them and the legal machinery of the United States should not selectively enforce the United States Customs law or lay down rules of procedure that operate to "close the door of the Court house to timely suitors".

'Accelerated judgment' can be and often is an exercise of judicial power and it requires "No Thing" in the Constitution to dismiss a complaint, with prejudice, before the truth of the complaint is denied which, in the case at bar, such denial flatly contradicts the defendants' written agreement, making such denial vulnerable to motion to strike such answer as sham.

II

COMPENSATION FOR WRONGS OF A REPEATED AND CONTINUING CHARACTER

Plaintiffs' ownership of 55 land motor vehicles are property to them (Duplex Printing Press v. Deering 254 U.S. 443). Plaintiffs' ownership supervision and control of its property, with its duly licensed, bona-fide card carrying employees is incident to such right. Any law which operates to make lawful such wrong as is described in plaintiffs' complaint deprives the owner of

the business and the premises of his property and cannot be held valid under the Fourteenth Amendment. It requires no argument to show that the right to work for a living in the common occupations of the community is the very essence of the personal freedom and opportunity it was the purpose of the Amendment to secure. (Truax v. Raich 239 US 33).

The right to work -- which goes to the very heart of our way of life is at stake in this appeal -- (Douglas, J., Linehan v. Waterfront Commission of New York Harbor; Staten Island Loaders, Inc. v. Waterfront Commission of New York Harbor 347 US 439; 117 F. Supp. 308).

In all social systems there must be a class to do the menial duties, to perform the drudgery of life. That is, a class (plaintiffs are members of a class (49 U.S.C. 10706 c, d, (C)) requiring but a low order of intellect and but of little skill. Its requisites are vigor, docility, fidelity, a weak mind and a strong back. Such a class there must be or there would not be the other class which leads progress, civilization and refinement. No doubt, plaintiffs would have been better off if they had hired and paid for the services of the Lafitte brothers - then, wait for the Internal Revenue Service to call a parade expecting the plaintiffs to fall in line and cheer, than to go hat in hand and pay the defendants and beg for

their permission to be left alone so as to be free to earn the almighty American dollar.

The existence of human society depends upon the exercise of coercive power to enforce the law by those in authority and suitors, because they are victims of events they could not possibly control or avoid, ought to be entitled to compensation from the wrongdoer who "Endangers the Revenue" of the United States instead of letting the harm fall on the victim. The "victim", in a fundamental sense, has been denied the 'protection' of the laws and society should assume some responsibility for making him whole. What the equal protection clause of the Constitution does not command, it may inspire, (Goldberg, J.).

In a free society, the deprivation of the right to work is one of the cruelest methods of punishment that a human can endure.

Accelerated judgments are "short cuts" and may, at times, seem to serve noble ends, but it is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule of law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law. (Douglas, J., Joint Anti-Fascist Refugee Committee v. McGrath 341 US 123).

"Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles". (Jackson, J., Brown v. Allen 344 US 443).

Appellants contend that the orders of the Courts below, from the beginning, are erroneous because the pact which purports to give the exclusive privilege it sustains are repugnant to the Constitution and the laws of the United States. (Gibbons v. Ogden 9 Wheat 1.).

To lay, with one hand, the power of the government on the property of the citizen and, with the other, bestow it upon favored individuals to aid private enterprises and build up private fortunes is none the less a robbery because it is done under the forms of Law. (Citizen's Savings and Loan v. Topeka 20 Wall 655).

III

A MARITIME AGREEMENT LESSENING OR RELIEVING AN OCEAN CARRIER FROM LIABILITY IS NULL AND VOID - - 46 USC 1303 (8).

"It is horn-book law that if a court lacks subject matter jurisdiction of a law-suit, at the outset, all judgments, orders, etc. and for that matter all appellate decisions in the action are a nullity." (Platt, J., Air Transport Ass'n v. Professional Air Controllers 516 F.S. 2d 1108).

On April 4, 1960, Chief Justice Earl Warren wrote:

> "Experience has shown that in order to promote simplicity in procedure, the just determination of litigation and the elimination of unjustifiable expense and delay, it is essential that the operation and effect of the Federal Rules of Practice and Procedure should be the subject of continuous study. Such study is the objective of the committees being formed today and every judge, practicing lawyer and legal scholar will be afforded the opportunity to participate -- to state his views -- with the assurance that those views will be given consideration."
>
> "The Supreme Court will approve, modify, or disapprove of the changes in the Federal Rules and those adopted will be transmitted by the Supreme Court to Congress."

The Shipping Act of 1916; 46 U.S.C. 801 et seq.; The Tariff Act of 1930; 46 Stat 590, 19 U.S.C. 1202; Federal Rules of Civil Procedure and 28 U.S.C. 2072 adequately provide the law of the case at the bar. While plaintiffs advocate a reversal, they believe they have the established law on

their side, but do not have the political power, while the defendants stand for the status quo, have the political power but not the law on their side.

If the decisions of the Courts below are permitted to stand, then what Brewer, J. wrote in 158 US 564:

> "Constitution provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation. The law of the common carrier is the same today as when transportation by land was by stage coach and wagon, and on water by canal boat and sailing vessel, yet in its actual operation it touches and regulates transportation by modes then unknown. Just so it is with the grant to the national government of power over interstate commerce. The Constitution has not changed. The power is the same. But it operates today upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which in the future may develop."

is a recitation of a promise to the ear to be broken in the hope like a munificent bequest in a pauper's will.

CONCLUSION

Plaintiffs respectfully request that this Court review the decisions of the Courts below and, on the record that has been called up, either dismiss this appeal

on its merits or grant plaintiff an appropriate judgment, for the reason that there is no middle ground, in judicio, involving the purpose of the plaintiffs in bringing this suit.

DATED: June 1, 1982

Respectfully submitted,
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 81-7788

RIVOLI TRUCKING CORPORATION and
M. MAURICE GRAHAM,

Appellant-Plaintiffs,

-v-

NEW YORK SHIPPING ASSOCIATION, INC., ALCCA STEAMSHIP COMPANY, INC., AMERICAN EXPORT LINES, INC., AMERICAN PRESIDENT LINES, LTD., ARGENTINE STATE LINE, BARBER STEAMSHIP LINES, INC., BELGIAN LINE, INCORPORATED, BLACK DIAMOND STEAMSHIP CORP., BOISE-GRIFFIN STEAMSHIP CO., INC., BOOTH AMERICAN SHIPPING CORPORATION, CONCORDIA LINE, COSMOPOLITAN SHIPPING COMPANY, INC., CUNARD STEAM-SHIP COMPANY LTD., EAST COAST OVERSEAS CORP., FARRELL LINES, INCORPORATED, FEARNLEY & EGER, INC., FERN LINE, FRENCH LINE (COMPAGNIE GENERAL TRANSATLANTIQUE), FUCH EDYE & CO., INCORPORATED, FURNESS, WITHY & CO., LTD., HOLLAND-AMERICA LINE, INTERNATIONAL TERMINAL OPERATING CO., INC., LUCKENBACK STEAMSHIP CO., INC., JOHN W. McGRATH CORPORATION, MOORE-McCORMACK LINES, INC., NORTON LILLY & COMPANY, NORWEGIAN AMERICAN LINE AGENCY, INC., N.Y.K. LINE (NIPPON YUSEN KAISHA), O.S.K. LINE, PITTSON STEVEDORING CORP., PRUDENTIAL STEAMSHIP CORPORATION, ROYAL NETHERLANDS STEAMSHIP COMPANY, SEALAND DOCK & TERMINAL CORP., TORM LINES, INC., UNITED STATES LINES COMPANY, UNITED STATES NAVIGATION CO., INC., VENEAUELAN LINE, NEW YORK TERMINAL CONFERENCE, ATLANTIC CONTAINER LINE, G.I.E., HOWLAND HOOK MARINE TERMINAL CORP., MAERSK TERMINALS INC., GLOBAL TERMINAL & CONTAINER SERVICES, INC., PUERTO RICO MARINE MANAGEMENT

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INC., SEA-LAND SERVICE INC., SEATRAIN LINES INC., NORTHEAST MARINE TERMINAL CO., INC., UNITED TERMINALS, INC., UNIVERSAL MARITIME SERVICE CORP.,

Appellee- Defendants.

- -

Notice is hereby given that Rivoli Trucking Corporation and M. Maurice Graham, plaintiff-appellants, above named, hereby appeal to the Supreme Court of the United States from the April 19th, 1982 order of the United States Court of Appeals for the Second Circuit that affirmed the September 14th, 1981 and October 26th 1981 orders of the United States District Court, Southern District of New York. The United States District Court Southern District of New York dismissed plaintiff-appellants' complaints, with prejudice, notwithstanding that all of the defendants named chose not to serve and file any answer to plaintiffs' complaint.

This appeal is taken pursuant to 28 United States Code 1253 and 1254 (1).

Dated: Hempstead, N.Y.
May 10th, 1982

Rivoli Trucking Corporation
by: (signed)
Vice-President

M. Maurice Graham
Pro se and Attorney for
Plaintiffs
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(516) 489-7709

TO:
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Attorneys for Defendants
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The December 31, 1980 order of Brient, J.

MEMORANDUM ENDORSEMENT M-37

Rivoli Trucking Corporation v. New York Shipping Association, Inc., Alcoa Steamship Company, Inc., et al. and Federal Maritime Board, M-37

"The within motion was docketed December 3, 1980 as returnable in Part I of this Court on January 6, 1981. The Court also received a letter from the attorney for the Federal Maritime Board, requestomg that oral argument be rescheduled as a matter of her convenience, together with an affidavit and memcrandum in opposition to the motion.

"There is no need for oral argument. This litigation in which these papers are captioned was closed more than twenty years ago. See Rivoli Trucking Corporation v. New York Shipping Association, 167 F. Supp. (S.D.N.Y., Judge Dimock) and 167 F. Supp. 943 (S.D.N.Y., by then District Judge Kaufman.)

"Apparently, related issues were also litigated in the Eastern District of New York in an action entitled United States of America v. Graham, 64 Civ. 857, decided by Judge Dooling of that district on October 3, 1966.

"The motion does not present a civil emergency. No justification appears to reopen this ancient case at this time when "it is doubtful that the file still exists" (affidavit of Janis G. Schulmeisters). No benefit will flow to plaintiffs in reopening the case, except that they will

avoid payment of a filing fee for a new action.

"The motion is denied without prejudice to the substantive rights of any party.

"If plaintiff Rivoli Trucking Corporation has any justiciable claim to which it regards itself as entitled to any relief, legal or equitable, in this Court (including but not limited to the right to have some prior decree modified in some fashion) it may file a new plenary action for that purpose, setting forth claims in a new complaint which will comply with Rules 8, et seq., F. R. Civ. P. The complaint should cite and quote any prior judgments or decrees as to which plaintiff regards itself as entitled to modification or some other relief.

"Defendants named in such new action, if one is filed, may plead such defenses to which they regard themselves as entitled, including the defense of res judicata, collateral estoppel by judgment, and anything else.

"The papers concerning the within application shall not be filed under Docket No. 110-316, but shall be treated as a miscellaneous application in Part I of this Court and docketed and filed under No. M-37. No papers are to be accepted from anybody for filing by the Clerk of this Court under Docket No. 110-316, and that closed case shall not be reopened.

"Upon the filing of a new action

and payment of filing fee, a summons shall issue in the ordinary course and and a new docket number shall be assigned to the new case. That case shall be assigned by random selection to a District Judge pursuant to Rule 1 of the Rules of the Southern District for the Division of Business.

SO ORDERED. "

Dated: New York, New York
December 31, 1980

(signed)
Charles L. Brient
U.S.D.J.
(Part I)

Plaintiffs' verified complaint in
Case No. 81 Civ. 0554 (RJW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

RIVOLI TRUCKING CORPORATION,

Plaintiff,

v.

NEW YORK SHIPPING ASSOCIATION, INC.,
et al.,

Defendants.
- - - - - - - - - - - - - - - - - - -x

COMPLAINT-CLASS ACTION

Plaintiff alleges:

I

The jurisdiction of the Court is invoked pursuant to Title 28 United States Code Sections 1331 (c); 1342, 1,2,3,4; Section 1337 (a); Section 1340 and Title 42 United States Code 1983, 1985; Section 2000(a)-6. This is a suit in equity, authorized and instituted pursuant to Title II of the Civil Rights Act of 1964. (Title 42 United States Code Sections 2000 (a) et seq.). The jurisdiction of the Court is invoked to secure

protection of civil rights and to redress deprivation of rights, privileges and immunities secured by (a) Amendment Thirteen; Fourteen; Article I Section 10 of the Constitution of the United States; (b) the commerce clause; Article I, Section 8, Clause 1 & 3; Article I Section 10, Clause 2 of the Constitution of the United States; (c) Title II of the Civio Rights Act of 1964; (Title 42 United States Code 2000 et seq.), providing for relief against discrimination in places of public accomodation.

II

CLASS ACTION ALLEGATIONS

Plaintiff brings this action on behalf of itself and each license-holding United States Custom House cartage cartman franchised in Customs District 10 who seek protection when serving consignors, consignees, receivers and shippers using waterfront facilities and terminals in Customs District 10 pursuant to Rule 23 (a) 1,2,

3,4 of the Rules of Civil Procedure for United States District Courts for an adjudication whether it is consistent with the Civil Rights Act of 1957, 1960, 1964, 1968; 42 U.S.C. 1971 et seq. through 42 U.S.C. 3631 for Defendants to prohibit United States Treasury Bureau of Customs cartage cartmen from complying with their guaranteed allegiance or obligation of loyalty and obedience to United States Customs rules, regulations and practices. (1) Such cartmen are so numerous and the restraints imposed upon them, as set forth in this complaint, are so economically destructive of their means of earning a livelihood and income as to make it impracticable to bring them all individually before this Court. (2) There are questions of law and fact common to all licensed, approved franchised card-carrying United States Customs cartage cartmen. (3) The claims or defenses of the representative parties

are typical to all licensed, card-carrying Customs cargage cartmen. A common relief is sought and the interests of Plaintiff's class is adequately represented by Plaintiff.

III

On December 31, 1980, in File No. M 37, this Court ordered that Plaintiff "may file a new plenary action setting forth claims in a new complaint". However, the Federal Maritime Commission, the successor to the Federal Maritime Board is not made a party to this action because it cannot be made a party to this action without depriving this Court of jurisdiction. With such exception, Plaintiff repeats and re-alleges as part of this cause of action, all averments pleaded in paragraphs numbered "I" through "XI" in the M 37 proceeding with the same force and effect as if they were herein specifically set forth so that "the Defendants served in this action may plead such defenses to

which they regard themselves as entitled".

IV

At all of the times here mentioned, Plaintiff was a public cartage transportation corporation, duly organized and existing under and by virtue of the laws of the State of New York. Plaintiff was the owner and holder of United States Treasury Bureau of Customs license number 295. Plaintiff had an office for the transaction of business at 108 Front Street, New York City, County of New York, within Customs District 10. Plaintiff owned 55 land motor vehicles, each operated by a Treasury identified card-carrying Customs cartage cartman and each of the said vehicles had painted on both sides in black letters on a white background in letters 3 inches tall, the words, "Customhouse license 295 1/55". Plaintiff brings this action for an order restraining Defendants from obstructing and continuing to obstruct, under color

of law, any policy, mandate, rule, regulation or practice, custom or usage prohibiting, preventing, forbidding, withholding, denying, attempting to subvert or denying or depriving or attempting to deprive or otherwise interferring with or refusing to comply with the rules, regulations and practices mandated by Congress in the Tariff Act of 1930; 19 United States Code; the Civil Rights Act of 1964; 42 U.S.C. 2000 (a); P.L. 88-352; 78 Stat 243; The Motor Carrier Reform Act of 1980, Public Law 96-296; 94 Stat 739; 49 U.S.C. 11109 (a), (b), 10521, 11902 (a).

V

Commencing on or about March 25, 1955 and continuing thereafter without interruption until and including the date hereof, the Defendants agreed, conspired and combined to prevent Plaintiff from enjoying the full, fair and gainful employ-

ment opportunities in Customs District 10 in that, on each time, place and occasion when the Defendants found one of the Plaintiff's Bureau of Customs licensed trucks on one of their waterfront facilities, the Defendants acted and placed in motion massive, concerted and purposeful group activities which persuaded, induced and convinced Plaintiff that Plaintiff was not immune from each Defendants' vandalism, hostility and fatal violence, each time Plaintiff sought to load, stow, operate and control the land motor vehicles owned by Plaintiff without the Defendants' charges imposed under:

FEDERAL MARITIME BOARD AGREEMENT 8005,
Approved March 23, 1955

MEMORANDUM OF COOPERATIVE WORKING AGREEMENT RELATIVE TO CHARGES FOR LOADING OR UNLOADING WATERBORNE FREIGHT ONTO OR FROM TRUCKS AT PIERS OR OTHER WATERFRONT TERMINALS IN THE PORT OF GREATER NEW YORK AND VICINITY.

1. That they shall establich, publish and maintain tariffs containing just and reasonable rates, charges, classifications, rules, regulations and practices with respect to such services.....

2. That they shall assess and collect rates and charges for and in connection with such services strictly in accordance with rates, charges, classifications, rules, regulations and practices set forth in said tariffs.....

TARIFF NUMBER 4,
FEDERAL MARITIME BOARD AGREEMENT 8005-1
Approved August 19, 1957.

RIGHT TO LOAD AND UNLOAD TRUCKS

1. (a) The tariff may contain rules, regulations and practices prohibiting the loading of trucks at the piers or other waterfront terminals in said port by anyone other than the operators of said piers and waterfront terminals.

NEW YORK MARINE TERMINAL TARIFF No. 2
FEDERAL MARITIME COMMISSION No. 16;
Item No. 2 Page 21; Approved October 1, 1975.

A. Truck loading shall be performed solely by the agents, servants and employees of a participating member in accordance with the rules, regulations and practices contained in this tariff....

On April 8, 1976, the Defendant, New York Terminal Conference, issued FMC 16 Page 25 Item #9, the following change in the participating terminal operators' tariff:

"A. When the driver does not assist in the loading and stowing of his truck, the Participating Member shall make a

surcharge in addition to the applicable tariff rate of $15.71 per straight time man hour $22.51 per overtime man hour and $29.33 penalty time man hour, the time to be computed on the basis of each 15 minute period or fraction thereof."

VI

Commencing August 12, 1954 and continuously thereafter until this time, this date, Plaintiff rejected the Defendants' proffered truck loading and unloading services, to wit:

"PLEASE TAKE NOTICE, that commencing the 12th day of August, 1954, we will no longer require the loading services you render on your pier(s) for this particular movement as we intend to bring our own men and equipment to effect the loading of our own trucks.

Very truly yours,
RIVOLI TRUCKING CORPORATION
by:
Vice-President."

so that the Defendants were informed, had knowledge, knew or should have known that on or about January 22, 1957, the United States District Court, Southern District of New York, determined in File number

115-303 that:

> "Rivoli could load customers as of this date with his equipment and men at the piers in North River, Brooklyn, Staten Island and at the other piers in the Port of New York."

VII

The District Collector of Customs, Customs District 10, Treasury Department , Bureau of Customs reposes his special trust and confidence in the integrity and ability of cartagemen to perform with loyalty and obedience to Customs rules, regulations and practices when he licenses such persons in Customs District 10 and he expects them to fulfill the duties of Customs cartage with all the power, privileges and emoluments thereto of right appertaining to such persons in said capacity under Customs House licenses.

VIII

Upon information and belief, each of the Defendants herein named is a corporation, organized and existing by virtue of

the laws of the particular sovereignty of its incorporation, whether within states of the United States or within foreign countries, said particular sovereignty being to the Plaintiff, at this time, unknown as to each said corporate Defendant; each and every Defendant, herein named, maintains an office or operates a pier or other waterfront facility in Customs District 10 and directly is now profiting under the rules, regulations and practices announced in Federal Maritime Agreement 8005 & 8005-1 as a principal or as agent. The Defendant, New York Shipping Association, Inc., is a voluntary membership corporation which took over from the New York Shipping Association and is organized and exists under the laws of the State of New York, having its principal place of business at 80 Broad Street, New York City. It is the labor bargaining unit for its participating

members consisting of employer member steamship companies, terminal operators and stevedores. Some of the founders or incorporators of New York Shipping Association, Inc. may have dropped out, resigned or ceased doing business in the port of New York, other entities, persons or corporations may have joined. All participating members agreed to and approved Federal Maritime Agreement 8005 & 8005-1 and received the benefits thereof. The Defendant, New York Terminal Conference, is managed by J. A. Chebuske, Chairman, 17 Battery Place, New York City and is a voluntary employer participating membership association consisting of 7 or more members. The said New York Terminal Conference succeeded former tariff agents W. L. Swain, 80 Broad Street, New York City, tariff dated August 18, 1955 and R. J. Gage, 80 Broad Street, New York City, Tariff dated April 1, 1963. On October 1, 1980, J. A. Chebuske, Chairman aforesaid, issued the following change in. Port of New York Marine Terminal Tariff No. 2,

Federal Maritime Agreement No. 16 page 25;

No. 9

RESPONSIBILITIES OF MOTOR CARRIERS EMPLOYEES IN TRUCK LOADING AND UNLOADING.

A. When the truck driver does not assist in the loading and stowing of his truck, the Participating Member shall make a surcharge, in addition to the applicable tariff rate of $26.53 per straight time man hour, $37.95 per overtime man hour, and $49.35 per penalty meal time man hour, the time to be computed on the basis of each fifteen (15) minute period or fraction thereof.

B. When trucks are unloaded without the services of the Participating Member, unloading shall be completed within the time specified under ITEM 14 "Delay to Motor Carriers" such time period to commence when the truck is spotted for unloading. The terminal operator shall be entitled to a payment of $4.00 for each fifteen (15) minute period or fraction thereof in excess of specified time.

IX

Commencing on or about January 22, 1957 continuing thereafter without interruption, including this time, this date, the Defendants combined to acquire and obtained the exclusive privilege to destroy or substant-

ially injure Plaintiff's business, economically operated. by refusing, preventing, prohibiting and depriving Customs cartage cartmen of their obligation of fealty, fidelity and loyal obedience to Customs rules, regulations and practices by flouting Customs cartmen's civil rights granted them under a certified United States Treasury occupation which still is substantially connected with an important statutory governmental revenue raising function.

X

It was and still is the purpose of the Defendants' combination, common scheme or plan to compel or coerce and overcome plaintiff's and every licensed Customs cartage cartman's ability to resist the application of their Customs licenses, their funds, credits and land motor vehicles to be applied for the benefit of the Defendants named.

XI

The piers and waterfront terminals and facilities in Customs District 10 are

highways of commerce and places of public accomodation within the meaning of Title 42 United States Code 2000 (a) et seq. The facilities serve and offer to serve interstate movement of goods, wares and merchandise coming into and going out of Customs District 10. Said merchendise moves in interstate commerce and Plaintiff was engaged to transport such imports between and through several states under the authority of the United States Customs. The United States Customs charges Plaintiff under its rules, regulations and practices, with a personal liability as the primary and final carrier of such commodities to take proper care of the goods and to pick up and deliver such commodities exactly, no more, no less in conformity with United States Customs notations made on the "In Transit" permits which Customs agents give to its Customs cartage cartmen and which documents accompany the goods to their final destination.

XII

To the best of the Plaintiff's information, knowledge and belief, the following Defendants named in File No. M 37 cannot be found within the District as American-Israel Shipping Co., Inc., Anchor Terminal Service Co., Inc., Associated Operating Co., Atlantic Stevedoring Co., Inc., Bay Ridge Operating Co. Inc., Bull-Insular Line, Inc.,; John T. Clark & Son; Commercial Stevedoring Co., Inc.m; Grace Line; J.R. Hanson Construction Co. Inc.; Huron Stevedoring Corporation; International Freighting Corporation; Isbrandtsen Company, Inc., Isthmiam Lines, Inc., Jarka Corp.,; Lloyd Brasileiro; Marra Bros., Inc., Maude/James, Inc.,; Mersey & Hudson Wharfage Corp; North Atlantic & Gulf Steamship Co.Inc.; A. Pellegrino & Son, Inc.,; Pioneer Terminal Corp.; Seaboard Contracting Co.,Inc.; Seaway Stevedoring Co.,; States Marine Corporation; States Terminal Corporation; Stockard Steamship Corporation; United Port Service Company; Virginia Stevedoring Corp.,; Ward Line; West Coast Line, Inc.,

Plaintiff has information, believes

and avers that the following named are also participating members that are continuing the wrongful practices herein complained of: Atlantic Container, G.I.E.; Howland Hook Marine Terminal Corp., ; Maersk Container Service, Inc.,; Maher Terminals Inc.,;Global Terminal & Container Services, Inc.,; Puerto Rico Marine Management Inc.,; Sea-Land Service Inc., Seatrain Lires, Inc., Northeast Marine Terminal Co.,Inc.,;United Terminals, Inc.,; Universal Maritime Service Corp,

XIII

By reason of all of the foregoing, Plaintiff and United States Cartmen, generally have been and are now being subjugated to the payment of rates, charges, excises, imposts and the unauthorized use of their Customs House licenses, together with the unauthorized use of their labor and land motor vehicles. Such rates and exactions were and still are (1) unfair, unreasonable and parasitic and are in violation of the Tariff Act of 1930; 46 Stat. 590; 19 U.S.C. (2) unjustly discriminatory and in violation of the Civil Rights Acts

of 1957, 1960, 1964 and 1968 and have been pronounced as unlawful in the Motor Carrier Act of 1980; 96-296; 94 Stat 793; 49 U.S.C. 11902, 11109, 10521 so that plaintiff as well as United States Customs Cartmen generally have been and are now being induced and forced to commit continuous illegal and unlawful practices not contemplated by each of them for which plaintiff and Customs cartmen, generally have no adequate remedy at law for the Defendants' wrongful acts herein complained of.

WHEREFORE: Plaintiff prays that the Defendants be required to answer the charges herein; that after due hearing and investigation, an order be made commanding said Defendants and each of them to cease and desist from the aforesaid violations of the above mentioned acts and that Defendants establish and put in force and apply, in the future, to the land transportation of imports and exports, lawful rules, regulations and practices as to the Court may deem reasonable and just and that Defendants be required to pay complainant, by way of repara-

tion, for the unlawful practices, rules and regulations hereinbefore alleged, the sum of 877,500.63 or such other sum as, in the view of the evidence to be adduced herein, the Court shall determine that complainant is entitled to as an award of damages under the provisions of the aforementioned Acts for the violation thereof and that such other order be made requiring the Defedants to pay into the Treasury of the United States, the sum of $377,500.63, by reason of the fact that Defendants are joint and several holders, receivers and collectors of the revenue of the United States.

(Signed)
M. Maurice Graham
Attorney for Plaintiff

(VERIFICATION)

UNPUBLISHED MEMORANDUM

81 Civ. 0554

Dated: August 31, 1981

SOUTHERN DISTRICT OF NEW YORK

WARD, J. The complaint in this action was filed by Rivoli Trucking Corporation ("Rivoli"), and alleges that certain government sanctioned and approved practices on the piers of the Port of New York are unlawful. The other plaintiff, M. Maurice Graham, is a former stockholder of Rivoli who was granted leave to intervene in this action as a plaintiff by an order dated June 5, 1981. Thirty-eight of the fifty named defendants move, pursuant to Rule 56, Fed. R. Civ. P., for summary judgment. For the reasons hereinafter stated, this motion is granted, and the complaint filed in this action is dismissed as regards all the named defendants.

Background

The Court has expended no small effort in deciphering Rivoli's virtually incomprehensible complaint. It has been

aided in this difficult task by the fact that Rivoli has made precisely the same factual allegations in the course of a number of other judicial and administrative proceedings. Also, the moving defendants' counsel, who apparently have played a substantial role in opposing Rivoli's prior efforts to obtain relief, have submitted papers to the Court that have greatly assisted the Court's effort to ascertain the gravamen of Rivoli's complaint.

The background to this action is as follows. During the 1940's, the prevailing practice on the piers of the Port of New York was that imported cargo would be loaded onto trucks by "public loaders" hired and paid by truckmen. Export cargo, on the other hand, was customarily unloaded by the truckmen themselves. In 1953, subsequent to a comprehensive waterfront investigation, the Waterfront Commission of New York Harbor was established. This commission outlawed public loaders. Thereafter, the work of

loading imported goods onto trucks was assigned to the employees of stevedoring and steamship companies, while the truckmen continued to unload export freight from their trucks.

This arrangement was subsequently formalized in agreements providing that truck loading services would be performed exclusively by the terminal operators' longshore employees and that regulated rates could be charged for these services. These agreements were approved by the Federal Maritime Board ("the FMB"), now known as the Federal Maritime Commission ("the FMC"). Pursuant to these approved agreements, the New York Terminal Conference, a defendant herein, periodically issues truck loading tariffs on behalf of its terminal operator members and files them with the FMC.

Rivoli objected to this arrangement, and voiced its objection to various

federal tribunals on a number of occasions during the 1950's and the early 1960's. Rivoli's first action was dismissed by Judge Dimock of this Court, on the ground that the complaint stated a claim under the Shipping Act of 1916, 46 U.S.C. ss 801-842, meaning that the matter lay within the exclusive original jurisdiction of the FMB. Rivoli Trucking Corp. v. New York Shipping Association, 167 F. Supp. 940, 942 (S.D.N.Y. 1956). Responding to Judge Dimock's decision, Rivoli filed two complaints with the FMB, alleging that the above-described arrangement violated the Shipping Act of 1916. These complaints were both dismissed by the FMB during 1959 for want of prosecution.

Rivoli's apparent lack of interest in appearing before the FMB contrasts sharply with the zeal with which it has litigated in federal court. In April 1957, while Rivoli's FMB complaints were still pending, Rivoli moved for reargument of Judge Dimock's earlier order dismissing its complaint.

This motion was denied. Rivoli Trucking Corp. v. New York Shipping Association, 167 F. Supp. 940, 942-43 (S.D.N.Y. 1957). Rivoli was back in this court in November 1957, when it moved for leave to serve and file an amended and supplemental complaint in the dismissed action. Judge Kaufman, then of this Court, denied that motion. Rivoli Trucking Corp. v. New York Shipping Association, 167 F. Supp. 943, 946 (S.D.N.Y. 1957). In 1958, Rivoli commenced an action in the United States District Court for the Eastern District of New York that again challenged the practice of requiring truck loading to be performed by employees of stevedoring and steamship companies. Judge Zavatt dismissed this action on the ground that the complaint failed to state a claim upon which relief could be granted. Rivoli Trucking Corp. v. American Export Lines, Inc., 167 F. Supp. 937, 940 (E.D.N.Y. 1958). In 1962, Judge Dimock denied yet another Rivoli motion to set aside his 1956 order dismissing the action filed in this Court.

Rivoli Trucking Corp. v. New York Shipping Association, No. 110-316, slip op. at 2 (S.D.N.Y. July 17, 1962). Undaunted, in December 1980 Rivoli again moved for leave to serve and file a supplemental complaint in the action originally dismissed by Judge Dimock. This motion was denied by Judge Brieant of this Court. Rivoli Trucking v. New York Shipping Association, No. M-37, slip op. at 2 (S.D.N.Y. Dec. 31, 1980). In January of this year, apparently convinced at last that it stood no chance of resurrecting the 1956 action, Rivoli commenced this action by filing an entirely new complaint. This complaint names many of the same defendants as were named in Rivoli's previous actions and rests on the same factual basis as the complaints filed in those actions. A number of the named defendants responded to Rivoli's latest complaint by joining in a summary judgment motion, which motion is the subject of today's decision. While this motion was pending before the Court, M. Maurice

Graham, a former stockholder in Rivoli, moved for and was granted leave to intervene in this action as a plaintiff.

Discussion

The moving defendants present a variety of arguments in support of their motion for summary judgment. Specifically, they contend that they are entitled to summary judgment because (1) the complaint fails to state a claim upon which relief may be granted; (2) neither plaintiff has standing to maintain this action; (3) this Court lacks subject matter jurisdiction; (4) plaintiffs' claims are barred by res judicata; and (5) plaintiffs' claims are time barred either under the applicable statutes of limitations or under the doctrine of laches. Many, indeed perhaps all, of these grounds are meritorious. Since the Court agrees that Rivoli's complaint fails to state a claim upon which relief may be granted, it holds that the moving defendants are entitled to summary judgment on that ground alone, and

need not espressly deal with the other proffered grounds. The Court further holds that, owing to the fact that it fails to state a claim, the complaint filed in this action must be dismissed as regards all the named defendants.

As the Court reads the complaint, plaintiffs have three legal theories on which they pin their argument that the practice of requiring truck loading to be performed by employees of stevedoring and steamship companies is unlawful. First, the complaint alleges that this practice violates what it denominates as "the Civil Rights Acts", specifically, 42 U.S.C. s 1983, 42 U.S.C. s 1984, and 42 U.S.C. ss 2000a--2000a-6. Second, the complaint alleges that the challenged conduct violates section 565 of the Tariff Act of 1930, 19 U.S.C. s 1565. Finally, plaintiffs rely upon section 15(a)(1) of the Motor Carrier Act of 1980, 49 U.S.C. s 11109(b), as a legal ground for relief. The Court treats each of these three legal theories in turn.

Plaintiffs' reliance on "the Civil Rights Acts" is misplaced. In order to obtain relief under 42 U.S.C. s 1983, a plaintiff must allege and prove that the defendant acted under color of state law. Weiss v. Willow Tree Civic Association, 467 F. Supp. 803, 809 (S.D.N.Y. 1979). The only governmentsl involvement in the challenged activity here is the FMC's approval of the agreements that impose the restrictive truck-loading practices. This involvement, however, is purely of a federal nature, and thus is insufficient to form the predicate for liability under 42 U.S.C. s 1983. Nor can plaintiff hope to succeed under 42 U.S.C. s 1985 or 42 U.S.C. ss 2000a--2000a-6. Liability under these provisions requires proof that plaintiff was discriminated against on the basis of race or some other class-based criterion. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (42 U.S.C. s 1985); Rosado Maysonet v. Solis, 409 F. Supp. 576, 580 (D.P.R. 1975) (42 U.S.C. ss 2000a--2000a-6). Plaintiffs have alleged no such discrimination

here.

The Court is utterly nonplussed by plaintiffs' on section 565 of the Tariff Act of 1930. This provision reads as follows in its entirety:

> The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond, in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of or damage to, such merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Sectretary of the Treasury shall prescribe.

19 U. S.C. s 1565. Rivoli was, during the 1950's, a licensed United States Customs Service bonded cartman. However, Rivoli lost its license, for reasons that are not disclosed in the complaint or in any other papers before the Court, in 1958. In cases where the United States Customs Service revokes the license of a bonded cartman,

section 565 of the Tariff Act of 1930 provides a basis, in conjunction with the Administrative Procedure Act, for a federal court action to review the propriety of such revocation. See, e.g., Tempo Trucking and Transfer Corp. v. Dickson, 405 F. Supp. 506, 511-13 (E.D.N.Y. 1975). However, the Court finds nothing, either in the papers submitted by plaintiffs or by virtue of its own research, to support plaintiffs' proposition that this section either proscribes conduct such as is alleged to have occurred here or creates a cause of action permitting plaintiffs to enforce such a proscription. Certainly the plain language of the statute gives no indication to this effect; nor is there any case so holding. Moreover, even if section 565 of the Tariff Act of 1930 were properly construed to provide the basis for an action challenging a private party's role in influencing the United States Customs Service to revoke a bonded cartman's license, plaintiffs herein would still have failed to

state a claim under that provision because they have not alleged that Rivoli's cartman's license was ever revoked by the United States Customs Service.

Plaintiff's third line of attack on defendants' alleged conduct provides no more of a basis for relief than do the first two. Section 15 (a) (1) of the Motor Carrier Act of 1980 reads as follows:

> (a) Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subjest to the jurisdiction of the Commission under subchapter II of chapter 105 of this title) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the persons or persons providing such assistance.
>
> (b) It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title) to load or unload any part of such property onto or from such vehicle or to employ

> or pay one or more persons to load or unload any part of such property onto or from such vehicle, except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the Act of March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.), commonly known as the Norris-LaGuardia Act.

49 U.S.C. s 11109. Concededly, the language of 49 U.S.C. s 11109(b) has some facial applicability to conduct such as forms the gravamen of Rivoli's complaint. That is, this subsection's prohibition against "coerc(ing) .....any person providing transportation of property by motor vehicle for compensation in interstate commerce..... to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle," when read in isolation, does indeed seem potentially applicable to a case such as this: here, plaintiffs object that the FMC-approved agreements governing truck loading in the Port of New York "coerce" Rivoli into paying and employing certain persons for truck-loading

services, whereas Rivoli would prefer to perform such services itself. Unfortunately for plaintiffs, a deeper analysis of this section of the Motor Carrier Act of 1980 does not bear out its superficial appeal. The legislative history of the Motor Carrier Act of 1980 demonstrates that Congress did not intend the enactment of 42 U.S.C. s 11109 to affect practices such as are challenged here. See H. R. Rep. No. 1069, 96th Cong., 2d Sess. 31, reprinted in (1980) U.S. Code Cong. & Ad. News 2283, 2313. Moreover, nothing in the Motor Carrier Act of 1980 indicates that Congress intended to create a private right of action to remedy violations of 49 U.S.C. s 11109(b). By its terms, the act provides that violations of 49 U.S.C. s 11109(b) shall result in civil liability to the United States Government or in criminal liability. 49 U.S.C. s 11902a. Enforcement of the prohibitions contained in 49 U.S.C. s 11109(b) is placed in the hands of the Interstate Commerce Commission.

49 U.S.C. s 11702(a)(2).

Conclusion

On the basis of the foregoing analysis, the Court is constrained to hold that Rivoli's complaint fails to state a claim upon which relief may be granted, because none of the statutory provisions relied upon in the complaint provide a remedy for defendants" challenged conduct. Accordingly, the motion for summary judgment joined in by thirty-eight of the fifty named defendants is granted. Moreover, since the complaint fails to state a claim against any of the named defendants, the complaint is dismissed not only as regards the moving defendants, but as regards the other defendants as well. Plaintiffs, who have had ample opportunity during the course of the last quarter century to plead in a proper fashion any claims they may have based on the conduct of which they complain, shall not have leave to replead.

It is so ordered.

Dated: New York, New York
August 31, 1981

(signed) Robert J. Ward
U.S.D.J.

Plaintiffs' proposed verified amended complaint in Case No. 81 Civ. 0554 (RJW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

RIVOLI TRUCKING CORPORATION and M. MAURICE GRAHAM,

Plaintiffs,

v.

NEW YORK SHIPPING ASSOCIATION, INC., et al.,

Defendants.
- -x

Plaintiff for an amended verified complaint, complaining of the defendants, jointly and severally alleges:

1. Jurisdiction in the Court is found at Sections 1331, 1332, 1333, 1343, Title 28 U.S.C.; Article 1 Sections 8 & 10 and Amendments 1 through 10 of the Constitution of the United States and a revenue act of Congress 46 Stat 590, et seq., 19 USCA.

2. At the times herein mentioned, plaintiff was a public cartage transportation

corporation, duly organized and existing under and by virtue of the laws of the State of New York and plaintiff was the owner and holder of a United States Treasury Bureau of Customs License number 295. Plaintiff had an office for the transaction of business at 108 Front Street, New York City, County of New York, in Customs District 10. Plaintiff was the owner of 55 land motor vehicles, each operated by a United States Treasury licensed, card carrying Customs Cartage Cartman and each of the said plaintiff's land motor vehicles had painted on both sides in black letters on a white background the words, "CUSTOMHOUSE LICENSE 295 1/55".

3. Upon information and belief, each of the defendants named herein is a corporation, organized and existing under and by virtue of the laws of the particular sovereignty of its incorporation, whether within states of the United States or within foreign countries, said particular sovereignty being to the plaintiff, at this

time, unknown as to each said corporate defendant. However, each and every defendant named herein maintains an office or operates a pier or other waterfront facility in the Port of New York, Customs District 10. Upon information and belief, the defendant, New York Shipping Association, Inc., is a voluntary membership corporation and is the labor bargaining agent for the defendant participating members, consisting of employer member steamship companies, terminal operators and stevedores herein named and is organized and exists under and by virtue of the laws of the State of New York having its principal place of business at 80 Broad Street, New York City, as successor to New York Shipping Association, 80 Broad Street, New York City.

4. Plaintiff owned and was entitled to the immediate possession, operation and control of the following personal property.

Type	Number
1. Ford Sta, Wag.	1MK 49415
2. Ford Truck	FAA 554479
3. International Tractor	FAB 3613862

4. Autocar	50-3762
5. Mack Truck	65712
6.Autocar Tractor	35191
7.Mack Truck	BC54-6
8 Mack Truck	770-29
9.Mack Truck	BC-15-34
10. Mack Truck	806-51
11. Mack Truck	A354-51
12. Mack Truck	C746-82
13. Mack Truck	C782-16
14. Mack Truck	764-87
15. Mack Truck	C 706-19
16. Universal Trailer	1016
17 Trailmobile Trailer	21659
18. Fruehauf Trailer	1210
19 Fruehauf "	56317
20 Kentucky Trailer	5432
21 Highway Trailer	46947
22 Gramm Trailer	752659408
23 Byron "	BY8276
24 Universal "	22384
25 Mack Truck	C843-32
26 Mack Truck	C762-12
27 Mack Truck	AC818-25
28 Byron Trailer	1017223
29 Srick "	34683
30 Universal Trailer	1018
31 Trailmobile "	21782
32 Trailmobile "	21834
33 Lapeer "	12194
34 Fruehauf "	83271

35	Universal Trailer	1470
36	Fruehauff "	287109
37	Highway "	9140
38	Kentucky "	5452
39	Fruehauff "	77759
40	Brockway Tractor	48 B 21565
41	Fruehauff Trailer	K 2505
42	Autocar Tractor	19507
43	Autocar Tractor	C90T 12233
44	Autocar "	C90T 18347
45	Autocar "	C90T 148
44	White "	349918
47	Mack Truck	CT 69-32
48	Mack Truck	1533919
49	Autocar Tractor	15848
50	Autocar "	C90T 19057
51	International Tractor	33239
52	Mack Truck	4AC 1668
53	Mack Truck	813-55
54	Mack Truck	612-88
55	Autocar Tractor	CM 268998

and

Customhouse License # 295,(annexed hereto)

5 The defendants, jointly and severally converted the plaintiff's personal property listed at "4" above to their own use and benefit to plaintiff's damage in the amount of $877,500.63.

6. Plaintiff repeatedly demanded the surrender and delivery to it of the personal property listed at "4" above, of and from the defendants, and the plaintiff caused to be served personally on each of the defendants, a written demand from plaintiff for the surrender and delivery to plaintiff by defendants of the said personal property set forth and listed at "4" above.

7. At the times mentioned herein, the defendants refused and still refuse to deliver up to the plaintiff, the plaintiff's personal property and the defendants, jointly and severally, willfully, wrongfully and unlawfully retain , withhold the possession, operation and control of the aforementioned personal property from the plaintiff and the defendants have converted the same to their own use and benefit.

8. Defendants, not regarding plaintiff's ownership and its right to possession, operation and control of motor vehicles owned

by plaintiff on March 30th, 1981, ratified corroborated and continued to confederate, combine and agree among themselves to retain, withold and convert plaintiff's property to their own use and benefit to plaintiff's damage in the amount of $2,110,000.00.

9. Upon information and belief, the present day reasonable retail cost to plaintiff to replace the property converted by the defendants to their own use and benefit is $2,110,000.00 to wit:

19 Trucks @ 54,000.00 each	$1026,000.00
13 Tractors @ $58,000.00 ea.	754,000.00
22 Semi-Trailers @$15,000. ea.	330,000.00
	$ 2,110,000.00

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally for the amount of $2,110,000.00 with interest from the 1st Day of January 1954, together with the costs and disbursements of this action.

(Signed) M. MAURICE GRAHAM
Attorney for Plaintiff
Office & P.O Address
67 Stevens Avenue
Hempstead, N.Y. 11550
516-489-7709

VERIFIED SEPTEMBER 3, 1981.

THE ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED APRIL 19,1982.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York on the 19th day of April one thousand nine hundred and eighty-two.

(SEAL) APRIL 19,1982

Present:

Hon. J. Edward Lumbard
Hon. James L. Oakes
Circuit Judges
Hon. Daniel M. Friedman,
Chief Judge, Court of Claims*

81-7788

Rivoli Trucking Corp., and
M. Maurice Graham,
Appellants,

v.

New York Shipping Association, Inc., et al.,
Appellees.

O R D E R

This is an appeal from two orders of the United States District Court for the Southern District of New York, Robert J. Ward, Judge, denying appellants' motion for an order vacating a September 14, 1981 judgment of that court dismissing their complaint for leave to amend that complaint, for re-

argument, and for relief from the judgment. We affirm, and although appellants have not appealed from the judgment itself, we have separately denied their motion "for Reversal of Judgment Dismissing Complaint with prejudice."

Rivoli Trucking Corporation (Rivoli) formerly a trucker licensed by the Customs Service to Cart merchandise, brought this action against fifty defendants---shipping lines, their shipping association and various stevedores and waterfront terminal operators--alleging that their compliance with certain Federal Maritime Board agreements regulating truck loading and unloading on the docks constituted conspiracy to obstruct Rivoli's business in violation of the Civil Rights Acts, 42 U.S.C. s. 1983, 1985, and 2000a-2000a-6, section 15(a)(1) of the Motor Carrier Act of 1980, 49 U.S.C. 11109 (b), and section 565 of the Tariff Act of 1930, 19 U.S.C. s. 1565. Rivoli's grievance is as old as the agreements it challenges, dating from the mid-1950s. Rivoli's two previous federal complaints challenging the same agreements were dismissed Rivoli Trucking Corp. v. American Export Lines, Inc.,

167 F. Supp. 937, 940 (E.D.N.Y. 1958); Rivoli Trucking Corp. v. New York Shipping Association 167 F. Supp. 940, 942-43 (S.D. N.Y. 1957) motion for leave to amend complaint denied, 167 F. Supp. 943,946(S.D.N.Y. 1957) motion to set aside order of dismissal denied No 110-316 slip op at 2 (S.D.N.Y. July 17, 1962). motion for leave to amend complaint denied , No M-37 slip op at 2(S.D.N.Y. Dec.31, 1980).

Defendants moved below for summary judgment on the grounds that Rivoli failed to state a claim on which relief could be granted. lacked standing, and was barred by res judicata and the running of all relevant statutes of limitation, and that the court lacked subject matter jurisdiction. On August 31, 1981, Judge Ward, while noting that "perhaps all of these grounds are meritorious" granted defendants' motion solely on the ground of plaintiffs' failure to state a claim under any of the statutes they cited, and dismissed the complaint, denying leave to replead.

Rivoli moved on September 4 for reargument, for amendment of the judgment under Fed. R. Civ. P. 59 (a), and for leave to file an amended complaint under Fed R.Civ P. 15(a). On October 26 Judge Ward denied these three motions and alsc Rivoli's September 22 motion for relief from the judgment under Fed. R. Civ. P. 60(b), On November 9 Rivoli filed a notice of appeal from the October 26 orders. On Decembor 7 Rivoli moved in this court for reversal of the judgment.

We note at the outset that it is doubtful that Rivoli or its co-plaintiff and counsel, M. Maurice Graham, a former shareholder, have standing to bring this action, in light of the fact that Rivoli was dissolved as a New York corporation in 1966. True, New York Business Corporation Law 1006 (a)(4) provides that a dissolved corporation and its directors, officers, or shareholders "may sue or be sued in all Courts" but the introductory sentence of section 1006 (a) provides that this is only "for the purpose of winding up the affairs of the corporation."

Because plaintiffs delayed fifteen years after-Rivoli's dissolution before bringing this action, which is based solely on facts that were already a decade old at the time of dissolution, we do not think this litigation was part of a "winding-down" within the contemplation of N.Y. B.C.L. s. 1006 (a).

We need not decide this issue, however, because we agree with Judge Ward, for the reasons stated in his careful opinion, that Rivoli failed to state a claim on which relief can be granted. Judge Ward acted well within his discretion in denying plaintiff's reargument, amendment of the judgment under Fed. R. Civ. P. 59(e), and relief from the judgment under Fed R. Civ. P. 60(b). Judge Ward also acted properly in denying plaintiffs' motion for leave under Fed. R. Civ. P. 15(a) to file an amended complaint stating a wholly new claim to $2 million in damages for conversion of Rivoli's trucks. Under Fed. R. Civ. P. 15(a) unilateral amendment of a complaint after a responsive pleading has been served is left to the discretion of the court, though "leave shall be freely given

when justice requires." We do not think justice requires that Rivoli be permitted by amendment to advance a novel legal theory for the wrongs it has been complaining intermittingly for twenty-five years. As Judge Ward said in his order granting summary judgment to defendants, "(p)laintiffs, who have had ample opportunity during the course of the last quarter century to plead in a proper fashion any claim they may have based on the conduct of which they complain, shall not have leave to replead." And because Rivoli was denied leave to file its amended complaint, the suggestion in plaintiffs' papers that defendants are in default for not responding is meritless.

Oders affirmed.

(Signed) J. Edward Lumbard

(Signed) James L. Oakes

(Signed) Daniel M. Friedman
Chief Judge, Court of Claims,

* Sitting by designation

"N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court."

The United States District Court's Denial of Plaintiffs' motion filed September 4, 1981 Judge Robert J. Ward's order Dated October 26, 1981.

Rivoli Trucking Corp.
v.
New York Shipping Association Inc., et al.
81 Civ 554 (RJW)

Plaintiffs' motion filed September 4, 1981 is denied in all respects. To the extent plaintiffs' motion seeks reargument of this Court's August 31, 1981, memorandum decision in this case, it is denied because plaintiffs' papers fail to set forth any matter or controlling precedent that this decision overlooked. See Rule 3(j), Civil Rules of the United States District Court for the Southern District of New York. To the extent plaintiffs' motion seeks an order, pursuant to Rule 59 (e) Fed. R.Civ P., amending, altering or vacating this Court's August 31 decision, it is denied because plaintiffs have not alleged any traditionally recognized or logically persuasive ground in support of such a motion See Willens v. University of Massachusetts 570 F 2d 403,406 (1st Cir.1978). To the extent

plaintiffs' motion seeks an order, pursuant to Rule 15(a) Fed. R. Civ. P., granting plaintiffs leave to serve and file an amended complaint, it is denied for the reasons set forth in the Court's August 31, decision. See Rivoli Trucking Corp, v. New York Shipping Association No. 81 Civ. 554 (RJW) slip op at 10 (S.D.N.Y. August 31, 1981.

It is so ordered

Dated: New York, New York
October 26, 1981

(signed) Robert J. Ward,
U.S.D.J.

The United States District Court's Denial of Plaintiffs' motion filed September 22, 1981. Judge Ward's order dated October 26, 1981.

Rivoli Trucking Corp., et ano.

v.

New York Shipping Association, Inc., et al.
81 Civ. 554 (RJW)

Plaintiffs' motion filed September 22, 1981, seeking an order pursuant to Rule 60(b), Fed. R. Civ. P., relieving plaintiffs from the final judgment entered in this case on September 14, 1981, pursuant to this Court's memorandum decision of August 31, 1981, is hereby denied. Plaintiffs' papers fail to allege any facts or set forth any reason that would form the predicate for the order that they seek by this motion.

It is so ordered.

Dated: New York, New York
October 26, 1981

(Signed) Robert J. Ward
U.S.D.J.

United States District Court, S.D.N.Y.
order, Bicks, J., determining the
status quo of this dispute.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

CHARLES T. DOUDS, Regional
Director of the Second Region
of the National Labor Relations
Board, for and behalf of the
National Labor Relations Board,
Petitioner,

vs

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, INDEPENDENT, et al
Respondents.
- - - - - - - - - - - - - - - - - - -x

Civ. 115-303

New York, December 20, 1956

Your Honor, counsel for the petitioner and respondents in this proceeding have a stipulation to make for the record.

Counsel for the petitioner Charles T. Douds, the Regional Director of the Second Region of the National Labor Relations Board, on behalf of the Board, in the person of James F. Foley, and counsel for the respondents, the ILA, Independent, and Locals 791, 868, 920 and 306, in the person of Mr. Mischo; and counsel for Local 1814, another party

respondent, in the person of Mr. Cooperman, stipulate the following:

That this proceeding, with the consent of the Court, be continued until January 22, 1957, at 10:00 A.M., and that during the interval between this day and the date of January 22, 1957, that none or no one of the parties will disturb the status quo of the relations between respondents and its members and Rivoli as it was at the time this hearing began this morning, December 20, 1956; and that this status quo was that Rivoli could load customers as of this date with his equipment and men at the piers in North River, Brooklyn, and Staten Island, and at the other piers in the Port of Greater New York.

So ordered.

Dated: New York, New York
December 20, 1956

(signed) A. Bicks, J.
U.S.D.J.

The defendants' written agreement, dated March 23, 1959, amending FMB Agreement 8005.

"THIS AGREEMENT entered into at the City of New York, on this 23rd day of March, 1959, by and between the undersigned, parites to Federal Maritime Board Agreement 8005

W I T N E S S E T H

"WHEREAS, the parties hereto are the parties to an agreement, dated August 24, 1954, duly approved by the Federal Maritime Board on March 23, 1955 and designated Federal Maritime Board Agreement No. 8005; and

"WHEREAS, the said agreement provides that it may be amended upon the approval of not less than three-fourths of the parties thereto, and that the approval of any party may be given in writing after the convening of a meeting, at which such proposal has been considered and that no such amendment shall be effective prior to its approval, pursuant to Section 15 of the U.S. Shipping Act; and

"WHEREAS, at a meeting of the parties hereto, held on Friday, March 22, 1957 at 10:30 A.M. at 80 Broad Street, New York 4, New York at which a quorum of the parties was present, the parties hereto considered and voted in favor of amendment of this Agreement 8005 as hereinafter set forth; and

"WHEREAS, all of the parties hereto desire to amend Agreement No. 8005 after the convening of the said meeting so that it will authorize the promulgation in the tariff of rules, regulations and practices prohibiting the loading of trucks at waterfront terminals by anyone other that the said parties,

"NOW, THEREFORE, the parties do hereby mutually

agree as follows:

"FIRST: The second paragraph of the agreement shall be stricken therefrom and there shall be substituted therefor the following paragraph:

> 'The parties hereto, in consideration of the benefits, advantages and privileges to be severally and collectively derived from this cooperative working agreement with respect to the fixing of charges to be made by them to truckers for the service of loading or unloading freight carried by or consigned for carriage by common carriers by water in foreign commerce and in commerce to and from territories and possessions of the United States onto or from trucks at piers or at other waterfront terminals in the Port of Greater New York and vicinity, only in the manner and to the extent herein provided, and in order to bring about uniformity of treatment to, and to avoid possible discrimination against truckers and/or consignees or shippers agree as follows:'

"SECOND: There shall be inserted a new paragraph immediately after the end of Paragraph "1" as follows:

> '1(a) The tariff may contain rules, regulations and paractices prohibiting the loading of trucks at the piers or other waterfront terminals in said Port by anyone other than the operators of said piers or waterfront terminals.'

"THIRD: Except to the extent as is hereby specifically and at length set out, said Federal Maritime Board Agreement No. 8005

shall be, remain and continue in full force and effect as heretofore approved, pursuant to Section 15 of the Shipping Act, 1916, as amended.

"FOURTH: This agreement shall be effective as soon as, but not until, the same shall have been approved by the Federal Maritime Board, pursuant to Section 15 of the Shipping Act, 1916, as amended.

"IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their representatives thereunto duly authorized as of the day and year first above written."

AMERICAN EXPORT LINES, INC.

BY S/ L. A. ANDREWS

BULL-INSULAR LINES, INC.

BY S/ (Illegible) V.P.

COMPANIA SUD-AMERICANA
De VAPORES (CHILEAN LINE)

BY S/ JORGE ROON

NEDERLANDSCH-AMERIKAANSCHE
STOOMVAART MAATSCHAPPIJ
"HOLLAND-AMERIKA LIJN"
(HOLLAND AMERICA LINE)

BY S/ (Illegible)

NORWEGIAN AMERICA LINE
AGENCY, INC.

BY S/ (Illegible)

NORTH RIVER TERMINAL COMPANY, INC.

BY S/ James D. Davidson

AMERICAN PRESIDENT LINES, LTD.
BY S/ (Illegible)

THE CUNARD STEAMSHIP COMPANY LTD.
BY S/ (Illegible)

GRACE LINE, INC.
BY S/ (Illegible) V.P.

MOORE-McCORMACK LINES, INC.
BY S/ (Illegible) V.P.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.
GRANCOLOMBIANA, NEW YORK, INC.
BY S/ Jose Borrero
Acting General Manager

WEST COAST LINE, INC.
BY S/ J. Cassidy

AMERICAN STEVEDORES, INC.
BY S/ (Illegible)

BAY RIDGE OPERATING CO., INC.
BY S/ (Illegible)

COMMERCIAL STEVEDORING CO., INC.
BY S/ (Illegible)

MAHER STEVEDORING CO., INC.
BY S/ Michael E. Maher, Pres.

MAUDE/JAMES, INC.
BY S/ (Illegible)

MERSEY & HUDSON WHARFAGE
CORPORATION
BY S/ Ferguson Smith, Pres.

PIONEER TERMINAL CORPORATION
BY S/ (Illegible) Pres.

SEABOARD CONTRACTING COMPANY, INC.
BY S/ John J. Johnson, Pres.

ANCHOR TERMINAL SERVICE CO.,INC.
BY S/ (Illegible) Pres.

ATLANTIC STEVEDORING STEVEDORING CO., INC.
BY S/ J. B. Young, Executive V.P.

JOHN T. CLARK AND SON
BY S/ (Illegible)

INTERNATIONAL TERMINAL OPERATING
CO., INC.
BY S/ (Illegible)

MARRA BROS., INC.
BY S/ (Illegible) Comptroller

JOHN W. McGRATH
BY S/ (Illegible) V.P.

PACKET SHIPPING CORPORATION
BY S/ A. S. Smith, Treas.

PITTSTON STEVEDORING CORPORATION
BY S/ (Illegible)

JULES S. SOTTNEK COMPANY, INC.
BY S/ J.J. Damm, Treas.

STANDARD TERMINALS, INC.
BY S/ (Illegible) Pres.

TRANSOCEANIC TERMINAL CORPORATION
BY S/ (Illegible)

UNITED PORT SERVICE COMPANY
BY S/ (Illegible) Treas.

SEALAND DOCK & TERMINAL CORPORATION
BY S/ Milton Held, V.P.

SOTTNEK TERMINAL CORPORATION
BY S/ J.J. Damm, Treas.

TURNER & BLANCHARD, INC.
BY S/ Scott Blanchard, Jr., Pres.

UNIVERSAL TERMINAL & STEVEDORING
CORPORATION
BY S/ (Illegible)

THE ORDER ENTERED BY THE CLERK OF THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK ON SEPTEMBER 14, 1981.

RIVOLI TRUCKING CORPORATION and M. MAURICE GRAHAM,

Plaintiffs,

-vs-

NEW YORK SHIPPING ASSOCIATION,

Defendants

81 Civ 0554 (RJW)

JUDGMENT

(SEAL)

- - - - - - - - - - - - - - - -x

Thirty-Eight of the Fifty named defendants having moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment, and the said motions having come before the Honorable Robert Ward, United States District Judge and the Court thereafter on August 3, 1981 having handed down its memorandum granting defendants motion dismissing the complaint in this action as regards all the named defendants, it is,

ORDERED, ADJUDGED AND DECREED: that the complaint be and it is hereby dismissed as to all efendants, without leave to replead.

Dated: New Yor, N.Y.
September 14, 1981

(Signed) Raymond F. Burghardt
Clerk

APPENDIX B

The following is a list of all parties to the proceeding in the United States Court of Appeals for the Second Circuit whose judgment is sought to be reviewed.

New York Shipping Association, Inc., Alcoa Steamship Company, Inc., American Export Lines, Inc., American President Lines Ltd., Argentine State Line, Barber Steamship Lines, Inc., Belgian Line, Incorporated, Black Diamond Steamship Corp., Boise-Griffin Steamship Co., Inc., Booth American Shipping Corporation, Concordia Line, Cosmopolitan Shipping Company, Inc., Cunard Steamship Company, Ltd., East Coast Overseas Corp., Farrell Lines, Incorporated, Fearnley & Eger, Fern Line, French Line (Compagnie General Transatlantique), Fuch Edye & Co., Incorporated, Furness, Withy & Co., Ltd., Holland-America Line, International Terminal Operating Co., Inc., Luckenback Steamship Co., Inc., John W. McGrath Corporation, Moore-McCormack Lines, Inc., Norton Lilly & Company, Noregian America Line Agency, Inc., N.Y.K. Line (Nippon Yusen Kaisha) O.S.K. Line., Pittston Stevedoring Corp., Prudential Steamship Corporation, Royal Netherlands Steamship Company, Sealand Dock & Terminal Corp., Torm Lines, Inc., United States Lines Company, United States Navigation Co., Inc.,

Venezuelan Line, New York Terminal Coference, Atlantic Container Line, G.I.E., Howland Hook Marine Terminal Corp., Maersk Terminals, Inc., Global Terminal & Containet Services, Inc., Puerto Rico Marine Management, Inc., Sea-Land Service Inc., Seatrain Lines Inc., Northeast Marine Terminal Co., Inc., United Terminals, Inc., Universal Maritime Service Corp.

This listing has been included in a document filed earlier at A-59.

TO:

Lorenz, Finn, Giardino & Lambos,
Attorneys for Defendants- Appellees
29 Broadway
New York, New York, 10006

as substituted by:

Lambos, Flynn, Nyland & Giardino
Attorneys for Defendants-Appellees
29 Broadway
New York, New York 10006

SIRS:

PLEASE TAKE NOTICE that the plaintiffs appear in this action and that I am retained as attorney for them and demand that a copy of any and all papers in this action be served on me at my office at 67 Stevens Avenue, Hempstead, N.Y. 11550.

Dated: Hempstead, N.Y. June 1, 1982.

Yours etc.,

M. Maurice Graham
Attorney for Plaintiffs
Office & P.O. Address
67 Stevens Avenue
Hempstead, N.Y. 11550.
(516-489-7709.)

Office - Supreme Court, U.S.
FILED
JUL. M
ALEXANDER L. STEVAS,
CLERK

No. 81-2281

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

REVOLK TRUCKING CORPORATION and M. MAURICE GRAHAM,
Plaintiffs-Appellants,

v.

NEW YORK SHIPPING ASSOCIATION, INC., et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION TO DISMISS APPEAL

JAMES A. FLYNN
Counsel for Appellees New York
Shipping Association, Inc. and
New York Terminal Conference
LAMBOS, FLYNN, NYLAND & GIARDINO
29 Broadway
New York, New York 10006
(212) 943-2470

Of Counsel,
LISA A. BALLERO

TABLE OF CONTENTS

	PAGE
Statement of Case	1
Reason for Dismissing the Appeal	2
Conclusion	3

TABLE OF AUTHORITIES

Cases:

Rivoli Trucking Corporation v. *American Export Lines, Inc.*, 167 F. Supp. 937 (E.D.N.Y. 1958) .. 2

Rivoli Trucking Corporation v. *New York Shipping Association*, 167 F. Supp. 940 (S.D.N.Y. 1956) .. 2

Rivoli Trucking Corporation v. *New York Shipping Association*, 167 F. Supp. 943 (S.D.N.Y. 1957) .. 2

Rivoli Trucking Corporation v. *Scanlon*, 162 F. Supp. 53 (E.D.N.Y. 1958) 2

Rivoli Trucking Corporation v. *United States*, 221 F. Supp. 532 (S.D.N.Y. 1963) 2

Statutes:

28 U.S.C. § 1252 2

28 U.S.C. § 1253 2

28 U.S.C. § 1254(1) 3

28 U.S.C. § 1254(2) 3

28 U.S.C. § 2103 3

42 U.S.C. § 2000e-6(b) 2

Rules of Supreme Court:

Rule 16 1

Rule 28.1 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RIVOLI TRUCKING CORPORATION and M. MAURICE GRAHAM,

Plaintiffs-Appellants,

v.

NEW YORK SHIPPING ASSOCIATION, INC., et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO DISMISS APPEAL

Defendants-Appellees New York Shipping Association, Inc. ("NYSA") and New York Terminal Conference ("NYTC"),[1] pursuant to Rule 16 of the Rules of this Court, move for dismissal of the appeal for lack of jurisdiction and, alternatively, for denial of certiorari since this case is so insubstantial as not to merit review.

Statement of the Case

During the 1940's, truckers hired independent "public loaders" to load trucks on the piers and shipping terminals

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[1] Most of the other defendants-appellees, are members of N.Y.S.A. and N.Y.T.C. The members' interests are being represented before this Court by their associations.

In accordance with Rule 28.1 of the Rules of this Court, it should be noted that the corporate Defendant-Appellee N.Y.S.A. has one subsidiary, Atlantic Cargo Inspection Corporation.

of the Port of New York (A 26).[2] When public loaders were outlawed in 1953 by the Waterfront Commission of New York Harbor, their work was assigned to longshoremen employed by stevedoring and steamship companies (A 27), including the members of NYSA and NYTC. This practice of assigning pierside truckloading work exclusively to longshoremen was approved by the Federal Maritime Commission (A 27). Since the mid-1950's, Plaintiff-Appellant, Rivoli Trucking Corporation has instituted a multitude of unsuccessful actions challenging these practices. Each action was dismissed as unmeritorious.[3] This appeal involves the latest dismissal.[4]

Reason for Dismissing the Appeal

No appeal lies to this Court. None of the statutes cited by plaintiffs-appellants in either their jurisdictional statement or notice of appeal provides a jurisdictional basis for this appeal. Neither 28 U.S.C. § 1253 (A 1a) nor 42 U.S.C. § 2000e-6(b) (JS at 1) is applicable since this case was not entertained by a three-judge district court. Moreover, there is no other conceivable basis for invoking this Court's appellate jurisdiction. No state statute is

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[2] These references are to the pages of Appendix A to the jurisdictional statement. Any reference to the jurisdictional statement will be cited by the designation "JS".

[3] See, *e.g.*, *Rivoli Trucking Corporation* v. *New York Shipping Association*, 167 F. Supp. 940 (S.D.N.Y. 1956) (reh'g denied June 15, 1957); *Rivoli Trucking Corporation* v. *New York Shipping Association*, 167 F. Supp. 943 (S.D.N.Y. 1957); *Rivoli Trucking Corporation* v. *American Export Lines, Inc.*, 167 F. Supp. 937 (E.D.N.Y. 1958); *Rivoli Trucking Corporation* v. *Scanlon*, 162 F. Supp. 53 (E.D.N.Y. 1958); *Rivoli Trucking Corporation* v. *United States*, 221 F. Supp. 532 (S.D.N.Y. 1963).

[4] Ironically, Rivoli commenced its latest action in 1981 although it has not existed as a corporate entity since 1966 (A 51). Plaintiff-Appellant M. Maurice Graham is Rivoli's counsel and former stockholder.

involved which would call 28 U.S.C. § 1254 (2) into play, nor has any federal statute been declared unconstitutional which would trigger 28 U.S.C. § 1252.

Plaintiffs-appellants' other basis for this appeal, 28 U.S.C. § 1254(1) (A 1a), does not relate to appeals. It prescribes the jurisdictional basis for review by certiorari. No exceptional circumstances are present which would warrant conversion of this appeal into a certiorari proceeding under 28 U.S.C. § 2103. There are no important questions of federal law at issue nor any judicial conflicts. Indeed, every court that has entertained any aspect of this litigation has found that plaintiffs-appellants have no valid claim.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed.

Dated: New York, N.Y.
July 12, 1982

Respectfully submitted,

James A. Flynn
Lambos, Flynn, Nyland & Giardino
29 Broadway
New York, New York 10006
(212) 943-2470
Counsel for Defendants-Appellees
New York Shipping Association, Inc.
and New York Terminal Conference

Of Counsel,

Lisa A. Ballero